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1850 M Street, N.W., 11th Floor  
Washington, D.C. 20036  
Telephone: (202) 828-7453

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Jay C. Keithley  
Vice President  
Law and External Affairs  
United Telephone Companies

**EX PARTE**

May 26, 1994

Robert M. Pepper, Chief  
Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, NW, Room 822  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: In the Matter of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314

Dear Bob:

I must correct a mistatement I made in the letter, with attachments, I sent you yesterday. A copy of the letter without attachments is attached hereto for you convenience. In the last paragraph of the letter, I referenced the attachment to Sprint's PFR in this docket and wrote the attachment "shows the impact of Sprint's proportionate interest test on the larger cellular providers." As the attachment, a copy of which is attached, itself states, it shows the impact of using the Commission's 20% ownership attribution rule and applying a 20% POP overlap test. While, intuitively, the results of applying a 20% POP overlap test and applying Sprint's proportionate interest test (which uses a 20% POP overlap test) should be very similar, in preparing the attachment, Sprint did not test this premise. Thus, the attachment to our PFR shows only the impact of adopting a 20% POP overlap test. I apologize for any confusion. Thanks, again, for your attention.

Sincerely,

Jay C. Keithley  
Vice President  
Law and External Affairs

Attachment

cc: William F. Caton, Secretary  
Ralph A. Haller  
Gerald P. Vaughan  
Karen Brinkman  
Rudolfo Lujan Baca  
Thomas P. Stanley

Gregory Rosston  
Donald H. Gips  
Byron F. Marchant  
David R. Siddall  
Jane E. Mago  
Gregory J. Vogt

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Telephone (202) 828-7453

*Jay C. Keithley  
Vice President  
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**EX PARTE**

May 25, 1994

Robert M. Pepper, Chief  
Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, NW, Room 822  
Washington, DC 20554

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MAY 25 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Bob:

This letter follows up on our recent meeting during which Sprint Cellular expressed its concern that the Commission's PCS eligibility rules needlessly exclude geographically dispersed cellular carriers from participating in markets where they have no market influence. Sprint believes this inequity can be remedied if the Commission modifies the PCS POP overlap standard to 20 percent, and applies a simple attribution formula. This change will more accurately reflect carriers' market presence but will not allow geographically concentrated carriers to exert undue market influence.

In addition, as you requested, Sprint Cellular is providing responses to the following questions that you and Greg Rosston raised during our recent meeting:

- 1) Why is there so little activity in the secondary cellular market for the sale and/or transfer of minority partnership interests?
- 2) How are Metropolitan Statistical Areas ("MSA") configured within the Metropolitan Trading Areas ("MTA"), specifically in the Columbus, Ohio and Chicago, Illinois MTAs?

1. **There are three primary reasons for the lack of market activity in minority partnership interests:**

a. **Lack of control of the minority partner creates a market perception that such interests are not "liquid" or readily transferred at levels acceptable to shareholders.**

A recent Forbes magazine article (April 11, 1994, pp. 98-99) notes that minority shares of privately-held companies typically are discounted by 25%-40% from the appraised value of the property as a whole. Moreover, a Wall Street investment firm recently examined 68 assorted minority interest market transactions, including cellular transactions, conducted between 1988 and

1992. Each transaction analyzed was valued at \$5 million or more. The investment firm found that the average minority interest "squeeze out" or discount was 34.6%.

On the other hand, the average premium paid for majority control positions during the same period on 735 assorted transactions, again including cellular transactions, was 57.1%. Each of the 735 transactions analyzed was valued at \$10 million or more. In determining the market value of both the minority and majority sale transactions, the firm used a discounted cash flow analysis.

**b. Most cellular partnership agreements provide first right of refusal options.**

Minority limited partners often find that they cannot negotiate freely or in a timely fashion with non-affiliated parties because majority partners potentially can delay any transaction.

**c. Limited cash flow.**

Although some cellular systems are beginning to pay dividends, most remain a cash drain for their investors. A minority partner in a cellular partnership that makes "cash calls" but does not pay dividends will not find a ready market for its non-controlling interest.

2. Submitted as Attachment A is a chart that identifies MSA populations within MTAs located within the continental United States.

The first four columns identify the MTA by name, number and population and indicate whether the MTA includes any of the top 30 MSAs. Columns 5-9 show the percentage of the MSA POP by market size in the MTA. Column 5 shows the percentage overlap between the MTA and the 30 largest MSAs, Column 6 shows the percentage overlap between the MTA and the 60 largest MSAs and so on. For example, in the Atlanta MTA, 65.4% of the MTA POP is made up of MSA locations, 38.4% are top 30 MSA markets, but none of the second thirty largest MSAs are in the MTA. While the results vary significantly among the MTAs, the document shows that, on average, for the 47 MTAs listed, 76.4% of an MTA is made up of MSA markets.

Regarding the Chicago and Columbus MTAs, Columbus presents the most problematical situation for Sprint Cellular. Under the current rules (20% ownership attribution and 10% population overlap) Sprint Cellular is ineligible to bid in the Columbus MTA even though it has no MSA POP overlap in the MTA. Sprint Cellular's controlling interest in two Ohio RSAs, Ohio RSA 5 and 6, creates a 12.49% POP overlap and, under the rules, prevents it from providing PCS service in the Columbus MSA/MTA.

In Chicago, controlling interests in MSAs far removed from the Chicago metropolitan area (Peoria, IL -- MSA 103, South Bend, IN -- MSA 129, Elkhart, IN -- MSA 223), minority interests in an MSA far removed from Chicago (25% ownership of the Ft. Wayne, IN MSA B-

Robert M. Pepper, Chief  
May 25, 1994  
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side license) a majority ownership of IN RSA-2, and a minority interest in IN RSA-3 combine to give Sprint Cellular a 13.16% POP overlap and, under the Commission's rules, prevent Sprint from competing for PCS spectrum in the greater Chicago metropolitan area.

These results demonstrate that the Commission's eligibility rules have an unintended negative impact on geographically dispersed cellular carriers such as Sprint. Sprint recognizes the Commission's legitimate concern with incumbent cellular providers exercising undue market power with regard to the licensing of PCS. However, the Commission's rules, in Sprint's view, are overbroad, and exclude cellular carriers that under no recognized competitive measure exert market power in the PCS markets at issue. A 20% ownership interest in a cellular license does not create a controlling interest, and, more important, a 10% population overlap in an MTA does not remotely constitute market power. We urge the Commission to adopt Sprint's proportionate interest test, which more fairly and accurately represents a carrier's actual market presence.

We are attaching for your convenience a copy of Sprint Cellular's Petition for Reconsideration in this matter. The attachment to the Petition shows the impact of Sprint's proportionate interest test on the larger cellular providers. Please call if you have additional questions.

Sincerely,



Jay C. Keithley  
Vice President  
Law and External Affairs

**Attachments**

cc: William F. Caton, Secretary  
Ralph A. Haller  
Gerald P. Vaughan  
Karen Brinkman  
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**Top 12 Cellular Carriers  
Excluded to Attributed Pops Ratio  
10% vs 20% of Market Pops**

	<u>Excluded Markets</u>	<u>Excluded MTA Pops</u>	<u>Attributed MTA Pops</u>	<u>Excluded to Attributed Pops Ratio</u>	<u>Difference</u>
<b>Sprint</b>					
10% of Market Pops	16	81,322,507	25,025,224	3.25	
20% of Market Pops	8	27,635,215	25,025,224	1.10	2.15
<b>Sprint **</b>					
10% of Market Pops	14	75,927,700	23,535,772	3.23	
20% of Market Pops	9	32,646,000	23,535,772	1.39	1.84
<b>McCaw</b>					
10% of Market Pops	23	142,977,804	98,193,227	1.46	
20% of Market Pops	22	141,083,805	98,193,227	1.44	0.02
<b>GTE</b>					
10% of Market Pops	23	111,008,008	59,895,727	1.85	
20% of Market Pops	20	95,848,911	59,895,727	1.60	0.25
<b>PacTel</b>					
10% of Market Pops	9	63,558,800	50,229,105	1.27	
20% of Market Pops	9	63,558,800	50,229,105	1.27	0.00
<b>BellSouth</b>					
10% of Market Pops	18	94,808,901	52,788,198	1.79	
20% of Market Pops	13	68,071,408	52,788,198	1.29	0.50
<b>Bell Atlantic</b>					
10% of Market Pops	8	72,180,802	47,184,438	1.53	
20% of Market Pops	8	72,180,802	47,184,438	1.53	0.00
<b>SBMS</b>					
10% of Market Pops	10	54,888,902	38,652,787	1.49	
20% of Market Pops	9	52,883,703	38,652,787	1.44	0.05
<b>Ameritech</b>					
10% of Market Pops	7	41,883,703	27,938,545	1.49	
20% of Market Pops	7	41,883,703	27,938,545	1.49	0.00
<b>TDS</b>					
10% of Market Pops	20	78,279,420	22,803,108	3.43	
20% of Market Pops	9	28,983,331	22,803,108	1.18	2.25
<b>NYNEX</b>					
10% of Market Pops	3	38,894,901	29,052,212	1.33	
20% of Market Pops	3	38,894,901	29,052,212	1.33	0.00
<b>US West</b>					
10% of Market Pops	11	50,835,400	21,516,778	2.36	
20% of Market Pops	9	29,120,802	21,516,778	1.35	1.01
<b>ALLTEL</b>					
10% of Market Pops	8	28,208,300	10,480,881	2.70	
20% of Market Pops	4	8,988,000	10,480,881	0.85	1.84

Note: The above numbers (excluding Sprint \*\*) assume that cellular MSA and RSA markets fall entirely within a given MTA. Sprint \*\* was analyzed at the county level to reflect where cellular markets, and therefore pops, intersect MTA boundaries (i.e., certain cellular markets are located in more than one MTA).